

General Information Letter: Corporation in bankruptcy which has no Illinois income tax liability and which has received a waiver of requirement to file federal income tax returns has no obligation to file Illinois income tax returns under Section 502(a) of the IITA

January 21, 2000

Dear:

This is in response to your letter dated January 5, 2000, in which you request the Department to waive the Illinois income tax return filing requirements for the bankruptcy estate of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter you have stated the following:

I am the Chapter 7 Trustee appointed by the United States Bankruptcy Court for the above captioned corporate bankruptcy estate. On or about March 1, 1994, a voluntary petition for relief under Chapter 7 of the Bankruptcy Code was filed by xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. From and after the date of my appointment, the estate has generated \$60,576.00 in previously taxed accounts receivable collections, \$13,500.00 in inventory sales from inventory assets with a tax basis of \$267,023 on the Company's last tax return, \$3,000 in fixed asset sales from fixed assets with a net tax basis of \$29,483 on the Company's last tax return, \$30,281.94 in preference payment recoveries (a non-taxable event), and \$24,000 in fraudulent transfer recoveries (a non-taxable event). The only new, taxable event was \$9,640.80 in interest received over the last four years which is completely offset by the last filed tax returns net operating loss of \$268,000.00.

I have made no payments for post-petition payroll. Prior to the commencement of the case, all available information (see attached) indicates that the prepetition Company operated at a severe loss, especially for the portion of its tax year prior to the commencement of the case. The amount of proceeds I have realized from the liquidation of the estate is inadequate to exceed the Company's last filed tax return net operating loss of \$268,000.00 and accordingly it appears to be impossible for the estate to incur any tax liability.

I respectfully request that the Illinois Department of Revenue accept this request for waiver of filing federal income tax returns as adequate under the circumstances described, and that you remove the Company and the estate from the tax rolls as relating to tax returns filing for periods after that covered by the enclosed letter.

### Response

Section 502(a) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 5/101 et seq.) provides:

A return with respect to the taxes imposed by this Act shall be made by every person for any taxable year:

(1) For which such person is liable for a tax imposed by this Act, or

(2) In the case of a resident or in the case of a corporation which is qualified to do business in this State, for which such person is required to make a federal income tax return, regardless of whether such person is liable for a tax imposed by this Act.

There is no statutory provision authorizing the Department of Revenue to waive these filing requirements. However, if a corporation has no Illinois income tax liability, Section 502(a)(1) of the IITA does not require a return to be filed. Also, I understand that the Internal Revenue Service has the authority to waive a corporation's filing requirement. If the Internal Revenue Service waives a corporation's filing requirement, Section 502(a)(2) would not require that corporation to file an Illinois income tax return. Accordingly, a corporation that has no Illinois income tax liability and that has obtained a waiver of filing from the Internal Revenue Service will have no Illinois income tax filing requirement.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Sincerely,

Paul S. Caselton  
Deputy Chief Counsel -- Income Tax